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and liberty, possessing and protecting property." The opinion cites a multitude of authorities, from the Year Books down.

We have been informed by a member of the New Hampshire bar that this opinion probably cost the learned, but eccentric judge, a seat upon the bench of the Supreme Court of the United States. While his appointment was being seriously considered, the attention of the President was called to the opinion by friends of a rival candidate; and the expenditure of such a mass of energy and learning over so trivial a case, turned the scales in favor of the rival.

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**DAMAGES FOR BREACH OF STATUTE—VIOLATION OF CITY ORDINANCES.**—It is a general principle that failure to conform to the requirements of a statute intended to protect the person and property of the citizen is itself negligence and actionable, if the proximate cause of an injury—or, as it is often expressed, the breach of a statute is actionable by any person injured thereby. See *Barnett v. Lynch*, 5 Barn. & Cres. 589; 3 Rob. (New) Prac. 425. And the Virginia Code (section 2900), declares that "any person injured by the violation of any statute, may recover from the offender such damages as he may sustain by reason of the violation." *W. U. Tel. Co. v. Reynolds*, 77 Va. 173, 178; *N. & W. R. Co. v. Irvine*, 84 Va. 553; *R. & D. R. Co. v. Noell*, 86 Va. 19.

Whether this rule is applicable to the breach of a city ordinance is not settled. The question was recently before the Supreme Court of Missouri, in the case of *Saunders v. Southern Electric Co.*, 48 S. W. 855, and was resolved in the negative. The court held that while the legislature may delegate to a municipal corporation the exercise of the police powers of the State, it cannot delegate the right to pass laws which will affect the rights of citizens *inter se* in civil proceedings.

The case arose out of an effort to hold a street railway company responsible for injury to the plaintiff, without proof of other negligence than a failure to comply with a city ordinance, requiring certain extraordinary precautions to prevent injury to passengers in the street.

"The contention," says the court, "that the city has the right under its police powers to adopt the ordinance is not tenable. A city, to which a portion of the police powers of the State has been delegated, has a right to enact police regulations, and to punish their violation by fine and imprisonment; but it cannot, under the guise of the exercise of its police powers, create a liability from one citizen to another, or create 'a civil duty, enforceable at common law,' for this is 'the exercise of the power of sovereignty, belonging alone to the State.' The legislature may delegate a part of the police power of the State to a municipality, but it cannot delegate the legislative function of making laws that will be binding upon citizens, between themselves, in civil proceedings. The police regulations control the citizen in respect to his relations to the city, representing the public at large, and for this reason are enforceable by fine and imprisonment; but laws controlling the liability of the citizens *inter se* must emanate from the legislature, in whom alone such power is vested by the constitution. *Norton v. City of St. Louis*, 97 Mo. 537, 11 S. W. 242; *City of St. Louis v. Connecticut Mut. Life Ins. Co.*, 107 Mo. 92, 17 S. W. 637; *Heeney v. Sprague*, 11 R. I. 456; *Railroad Co. v. Ervin*, 89 Pa. St. 71; *Vandyke v. City of Cincinnati*, 1 Disn. 532; *Flynn v. Canton Co.*, 40 Md. 312; *Jenks v. Williams*, 115 Mass. 217; *Kirby v. Association*, 14 Gray, 249."

There is much authority for the contrary doctrine. In *Bott v. Pratt* (Minn.), 23 N. W. 237, it was held that where an authorized city ordinance prohibits leaving a team unfastened or unguarded in a street, any one injured by a violation of the ordinance may maintain an action against the wrong-doer. The same principle is laid down in *Osborne v. McMasters* (Minn.), 41 N. W. 543. In *Salisbury v. Herchenroder*, 106 Mass. 458, the defendant was held liable for damages resulting from the falling of a sign placed over the street in violation of the city ordinance, notwithstanding he had exercised due care. In *Hayes v. Railroad Company*, 111 U. S. 228, the Supreme Court of the United States held that a failure by the defendant to fence its tracks as required by a duly authorized city ordinance, was evidence of negligence, though not conclusive; and that the ordinance had the force of law, within the city limits, even to the creation of civil rights. The court does not, however, in its opinion discuss the distinction between a statute and a city ordinance in this respect. See, also, *Doran v. Flood*, 47 Fed. 544.

In *Weeks v. McNulty*, 48 S. W. 809, the same question is discussed by the Supreme Court of Tennessee, where the suit was to recover damages for the death of plaintiff's intestate, caused by the burning of a hotel at which he was a guest, the specific negligence alleged being the defendant's failure to provide fire escapes as required by the city ordinance. The court's conclusion was that the ordinance might be relied on as creating a civil right, but since under the evidence its violation was not the proximate cause of the injury, the action could not be maintained.